

IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MONTANA
GREAT FALLS DIVISION

FILED
GREAT FALLS DIV.

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PATRICK E. DUFFY, CLERK
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UNITED STATES OF AMERICA,)	Cause No. CR 10-39-GF-SEH
)	
Plaintiff/Defendant,)	
)	
vs.)	ORDER RECHARACTERIZING
)	MOTION AND REQUIRING
THOMAS JOSEPH ROEBER,)	ANSWER
)	
Defendant/Plaintiff.)	
)	

On February 28, 2011, Defendant Thomas Roeber moved under Fed. R. Crim. P. 41(g) for the return of \$2,500.00 in cash seized from him on February 12, 2010. Mot. for Return of Property (doc. 48) at 1. He states that he was informed, in December 2010, that an agent gave the portion of the money that was not part of the controlled buy executed on February 10, 2010 – a total of \$2,050.00 – to his girlfriend, without prior notice to him.

A motion filed under Fed. R. Crim. P. 41(g) after criminal proceedings have concluded invokes the district court's equitable jurisdiction. Procedurally, it is treated as if it is a civil complaint. United States v. Ibrahim, 522 F.3d 1003, 1007

(9th Cir. 2008); United States v. Ritchie, 342 F.3d 903, 906-07 (9th Cir. 2003); United States v. Marolf, 173 F.3d 1213, 1216 (9th Cir. 1999); United States v. Martinson, 809 F.2d 1364, 1366-67 (9th Cir. 1987).

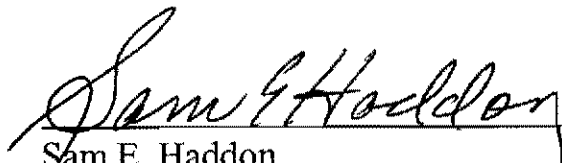
Roeber alleges his property was forfeited without proper notice to him. Mot. at 1-2. The United States must file an Answer.

ORDERED:

1. The United States must file and conventionally serve on Roeber an Answer or a motion for summary judgment within 21 days of the filing date of this Order. If a summary judgment motion is filed, the United States must comply with Rand v. Rowland, 154 F.3d 952 (9th Cir. 1998) (en banc), and D. Mont. L.R. 56.2.
2. If the United States files a motion for summary judgment, Roeber may respond to the motion within twenty-one days of its filing. The United States may file a reply within 14 days of the filing of Roeber's response.
3. The Clerk of Court has opened a civil file for administrative purposes only.

The parties may not file in the civil case.

DATED this 10th day of March, 2011.


Sam E. Haddon
United States District Judge